
Government of the District of Columbia



D.C. Office of the Tenant Advocate

Testimony of

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Public Hearing

**FY 2017 and FY 2018 Performance Oversight
of the Office of the Tenant Advocate**

Council of the District of Columbia

Committee on Housing and Neighborhood Revitalization
The Honorable Anita Bonds, Chairperson

Wednesday, March 7, 2018
11:00 a.m.

Room 123
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Thank you, Chairperson Bonds and members of the Committee on Housing and Neighborhood Revitalization, for giving me this opportunity to discuss the OTA's performance during Fiscal Year 2017, and to provide a summary of the Agency's accomplishments and new challenges facing us in Fiscal Year 2018. I am Johanna Shreve, Chief Tenant Advocate for the District of Columbia, at the Office of the Tenant Advocate.

First, I would like to take a moment to reflect on the significance of today's date. For you see it was 53 years ago today, March 7th 1965, that civil rights activists marched across the Pettus Bridge in Selma, Alabama, in support of voting rights for African Americans. That day came to be known as Bloody Sunday. I believe that by looking through the lens of history, we can best assess how well we are advancing our own mission. I am continually pleased to see something of the spirit of Pettus Bridge in Team OTA's daily march for tenant rights.

The OTA's Statutory Mandates

The Agency's statutory mandates fall into four programmatic areas: (1) education and outreach regarding tenants' rights; (2) policy advocacy in the legislative, regulatory, administrative, and judicial contexts; (3) legal assistance

and/or representation when there are disputes with landlords, including maintaining a Tenant Phone Hotline; and (4) emergency housing assistance.¹

The OTA's functions and activities

I will now briefly touch on the four (4) programmatic areas, and provide a glimpse into the accomplishments, challenges faced, and future plans for each operational component.

LEGAL DIVISION

Statutory mandate

The agency's Legal Division is responsible for the following three (3) distinct statutory duties: (a) to "advise tenants and tenant organizations on filing complaints and petitions"; (b) to "represent tenants, at its discretion and as it determines to be in the public interest"; and (c) to "operate a Tenant Phone Hotline."²

Functions and activities

(a) Case Management Services

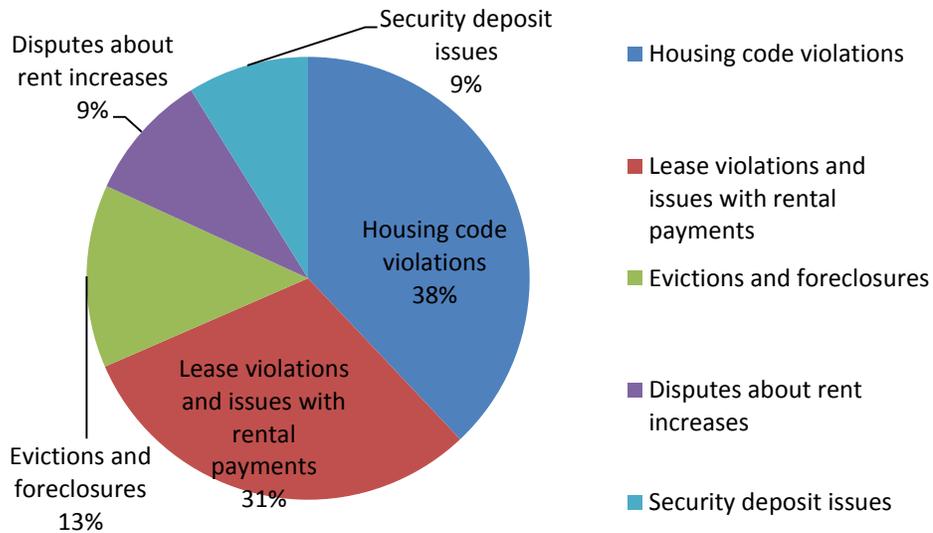
The first step in the legal assistance process is the case management intake system. We have two (2) Case Management Specialists (CMS) who serve as the frontline for legal and technical advice, and one vacant CMS position. CMS

¹D.C. Official Code § 42-3531.07

²D.C. Official Code § 42-3531.07(3), (5A), & (7)

staffers use an automated data system which was designed to capture all relevant information from those tenants who seek our help. This includes a standard protocol to ascertain key information about the property, such as whether the owner is currently licensed and registered and whether there are unabated housing code violations on the premises. For each and every intake case, the case management process is utilized as the starting point from which all other actions flow. The Director receives a weekly report which includes the number of intake case.

In FY 2017, the OTA handled cases affecting approximately 5,806 tenants through the intake process. In FY17, the five (5) most common issues recorded through the case intake process were: (1) housing code violations (2,175); (2) lease violations and issues with rental payments (1,748); (3) evictions and foreclosures (766); (4) disputes about rent increases (534); and (5) security deposits (507). I will also note the 363 mold complaints we handled in the last fiscal year. Upon the completion of the case management intake process, the case is then moved to the next step.



(b) Legal assistance

The attorney advisors provide legal assistance short of representation in a number of ways, including (a) reviewing and explaining legal documents; (b) providing specific, detailed, “beyond the boilerplate” legal advice; and (c) drafting legal documents to be filed by the tenant.

(c) Legal representation

The “legal representation” function may take one of two forms – in-house representation or in some instances referral to one of the Agency’s contracted legal service providers.

In determining whether to provide in-house representation, we ask two questions underlying our case selection criteria: what role should the government play, and what is the public interest impact? If the criteria are met, an OTA

attorney may represent the client for the duration of the case (whether at the Office of Administrative Hearings, Superior Court’s Landlord and Tenant Branch, or the Court’s Housing Conditions Calendar). Alternatively, the OTA may refer a client to an outside legal service provider.

In FY 2017, the OTA Legal Division provided full and limited representation to tenants in a total of 150 cases. In FY 2018 to date the team has provided full and limited representation to tenants in a total of 58 cases.

Below, you will find a chart showing cases assigned to each attorney in FY17 and FY18 to date.

	FY17*	FY18 (to date)*
Amir Sadeghy**	168	5
Ramona Quillet	636	263
William Mundy***	419	256
Sean Treanor****	513	216
Stephen Dudek	582	270
Harrison Magy	487	263

* These numbers include representation in Court, drafting of legal documents, and one-on-one legal consulting.

** Was detailed to the Rent Control Database project on June 1, 2017.

*** Was on Paid Family Leave for eight weeks in FY17.

**** Began eight weeks of Paid Family Leave on February 20, 2018.

(d) "Tenant Hotline"

The Tenant Hotline is mandated by the agency's establishment act.³

Tenants may ask the OTA questions about their rights in one of the following ways: by telephone or on-line through our "Ask the Director" forum; through periodic "Live OTA Q&A Chats" staffed by the Legal Division; and through "cold calls" generally to the Director, Legislative Director, or General Counsel. The OTA strives to respond to each non-emergency inquiry within 24 hours. In FY 2017, the OTA received and responded to 773 formal "Ask the Director." and 20 formal "Ask the Mayor" inquiries, and we held twelve (12) on-line "Live Chats."

(e) "Rapid Response Program"

The Agency has developed a Rapid Response Program to inform tenants about their rights, and about the OTA as a resource, to help them exercise those rights. Specifically, the OTA sends a letter to each affected tenant upon being informed that an important legal document has been sent to a tenant-occupied accommodation. The program resulted from our relationship with DHCD's Conversion and Sales Division and Rent Administrator's office regarding TOPA Offers and housing provider petitions, respectively. An example of our Rapid Response letter and explanatory pictorial sheet are attached to this testimony.

³D.C. Official Code § 42-3531.07(7)

Accomplishments

Several years ago we began to maintain data regarding the financial returns – including damage awards and rent rollbacks – derived from both in-house representation and the outside attorney “Legal Service Provider Program.” In FY 2017, the operational budget for the Legal Division was \$889,527,⁴ and the return to our clients was \$3,214,813. This represents a 361 percent return on the District’s investment in the OTA’s litigation team. With a combined appropriation for the OTA Legal Division and the Legal Service Provider funding program of \$1,179,527, the total return to tenants in FY 2017 was \$5,136,588. This represents a 435 percent return on the taxpayer investment.

As I have pointed out in the past, however, the actual bang for the buck extends beyond these numbers. A legal win for a tenant promotes future compliance and enforcement by the housing provider who is a party to that particular case, but by others as well. And when the case involves one or more illegal rent increases, affordability is preserved; when the case involves poor housing conditions, the quality of rental housing is likely to improve.

The OTA also collaborates with sister agencies, including the Office of Attorney General (OAG). This collaboration includes case referrals that have also

⁴ FY17 approved budget figures.

resulted in financial returns to tenants through litigation. The two agencies are partnering to co-sponsor a legal symposium later this month, the purpose of which is to discuss with tenant attorney practitioners the key legal and policy challenges their clients confront. The OTA understands that there is more work to be done than we have resources to accommodate. Therefore, through our collaborative efforts OTA is helping to build a firewall to protect tenant's rights -- each collaboration represents another brick in that firewall.

POLICY ADVOCACY

Statutory mandate

The Agency's policy advocacy mission is to "represent the interests of tenants and tenant organizations in legislative, executive, and judicial issues, including advocating changes in laws . . ." ⁵ Accordingly, the OTA engages each branch of District government to promote the public policy interests of tenants and the tenant community.

Functions and activities

A key Policy Division function is to work with stakeholders, the Council and the Mayor's office, sister agencies, and others to help identify statutory, regulatory, and other gaps in the District's system of tenant protections, and to

⁵D.C. Official Code § 42-3531.07(2)

develop proposals to help fill in those gaps. The Policy Division also keeps the community apprised of relevant legislative and regulatory developments – at both the federal and District levels – through regular listserv notices and stakeholder meetings, working in tandem with the OTA Education and Outreach Division. The Policy Division also regularly collaborates with non-governmental policy organizations such as the DC Preservation Network, the Coalition for Non-Profit Housing and Economic Development, the Urban Institute, the DC Fiscal Policy Institute, and the National Low-Income Housing Coalition (of which the OTA is a member).

Accomplishments

1. Enacted legislation

In FY 2017, the OTA helped draft or provided the Council and/or the Mayor’s Office with testimony or recommendations regarding rental housing-related legislation in a broad range of issue areas. We are gratified that a number of OTA priorities were enacted into law last year, including:

- B21-647, the “Rental Housing Late Fee Fairness Amendment Act of 2016” (Law 21-172 effective 12/8/16)
- B21-146, the “Rent Control Hardship Petition Limitation Amendment Act of 2015” (Law 21-197 effective 2/18/17)
- B21-173, the “Elderly and Tenants with Disabilities Protection Amendment Act of 2016” (Law 21-0239 effective 4/7/17)

- B21-420, the “Residential Lease Amendment Act of 2016” (Law 21-210 effective 2/18/17)
- B21-656, the “Relocation Expenses Recoupment and Lien Authority Amendment Act of 2016” (Law 21-211 effective 2/18/17)

2. Regulation: Property Maintenance Code

As a voting member of the “Property Maintenance” Technical Advisory Group (PM-TAG) -- one of about twenty TAGs that advise the Construction Code Coordinating Board (CCCB) --we are in a position to closely monitor and help improve the regulations that impact tenants the most.

This year the PM-TAG, along with the other TAGs, completed a review of the relevant sections of the 2015 model construction codes published by the International Code Council (ICC), an international association of experts that develops model construction codes in three (3) year cycles. In FY 2017 the PM-TAG approved, and the CCCB is now considering, several OTA-proposed revisions to the Property Maintenance Code (D.C.M.R. Title 12G), including:

- a) Protecting the tenant right of privacy by including a provision setting forth the criteria for when a code official must obtain an administrative search warrant before entering the tenant’s unit.⁶
- b) Maximizing the opportunity for the District to recover the cost of OTA emergency housing expenditures from derelict landlords by clarifying

⁶ Changes made to Section 104.3.1.

that DCRA's lien authority and OTA's lien authority are not mutually exclusive.⁷

Future considerations

The OTA ongoing policy concerns are reflected in a number of bills that have been introduced but not yet enacted, including but not limited to the following in chronological order:

- B22-25, the "Rental Housing Affordability Stabilization Amendment Act of 2017"
- B22-33, the "Displacement Prevention Amendment Act of 2017"
- B22-100, the "Preservation of Affordable Rent Control Housing Amendment Act of 2017"
- B22-170, the "At-Risk Tenant Protection Clarifying Amendment Act of 2017"
- B22-0290, the "Senior Citizen Real Property Tax Relief Amendment Act of 2017" (including further income tax relief for renters through Schedule H)
- B22-0315, the "TOPA Accessory Dwelling Unit Amendment Act of 2017"
- B22-0396, the "Property Manager Licensing Amendment Act of 2017"

Other concerns include mold remediation assistance given current enforcement limitations; and so-called "rent concessions" in rent controlled units, which create *de facto* rent ceilings, violate the rent control law's "rent ceiling abolition" provision, and threaten the affordability of rent-controlled units.

⁷ Changes made to Section 108.5.1. and Section 106.

EDUCATION AND OUTREACH

Statutory mandate

The OTA's first statutory duty is to "[p]rovide education and outreach to tenants and the community about laws, rules, and other policy matters involving rental housing, including tenant rights under the petition process and formation of tenant organizations."⁸

Functions and activities

Education and outreach about tenant rights takes many forms. Through the Tenant Educational Institute, we collect and maintain key legal materials for the Agency's Resource Center; we develop curriculums on basic tenant rights in various educational forums; we help to establish tenant associations and tutor them about board governance; and we create informational brochures. The Education and Outreach Division works in tandem with the Policy Division regarding regular stakeholder updates and meetings. Each fall we hold the Tenant and Tenant Association Summit to connect all parts of the tenant community with policy experts and elected officials.

⁸D.C. Official Code § 42-3531.07(1)

Accomplishments

During FY 2017 the OTA continued to expand its outreach and educational activities. In FY 2017, the OTA participated in over 15 outreach events. In FY 2018 to date, the OTA participated in over 11 outreach events. A list of those events is attached to my testimony. The agency continues to respond to requests from tenants interested in forming a tenant association and sustaining their organization. These presentations include information on how to file Articles of Incorporation and how to draft and secure approval of an Association's By-Laws. A ten-point curriculum is being developed for tenant associations and institutions of higher learning to enhance leadership skill-sets.

Future considerations

Ever expanding the Agency's outreach into all parts of the tenant community is the Division's most significant goal and challenge. Plans for FY 2018 include producing PSAs about off-campus student housing; clinics and webinars to include our existing "Tenant Rights 101" and "rental lease" curriculums; and further collaboration with area universities and embassies.

The OTA will also be looking into: (1) converting its Renters 101 training into a course that will lead to accredited certification; (2) the advantages and disadvantages of classifying property management as a trade; and (3) better

practices concerning security deposits such as the one implemented in Massachusetts.⁹

EMERGENCY HOUSING ASSISTANCE

Statutory mission

The OTA has a statutory duty to “provide emergency housing and relocation assistance to qualified tenants, as determined by the Office.”¹⁰

Functions and activities

The Agency fulfills this mandate through the Emergency Housing Assistance Program (EHAP), generally in collaboration with others including DHS Strong Families, DCHA, and the Red Cross. EHAP assistance is provided primarily to those tenants who are displaced by fires and government building closures. Benefits may include: (1) the short-term relocation of tenants to hotels, motels, or other appropriate accommodations, generally up to fourteen (14) days; and (2) the moving and storage of personal property.

The high demand for EHAP is evidenced by the fact the OTA spends more on EHAP than is budgeted. In FY 2017 the budgeted amount was \$545,936, but the actual expenditure was \$949,936. This represents a 174% increase. Prior to

⁹ The Massachusetts Security Deposit Law allows a landlord to deduct the cost of repairs from the security deposit, provided the landlord issues a sworn statement of itemized damage along with repair estimates within 30 days of the move out. Should the landlord not comply with this law, the landlord will be liable for treble damages plus attorney fees. MGL c. 186, §15B.

¹⁰D.C. Official Code § 42-3531.07(6A)

that, in FY 2016 the budgeted amount was \$426,764 and the actual expenditure amount was \$694,168. This represents a 127% increase. In FY 2017, the Agency provided EHAP services to over 150 families.

Thanks to Councilmember Nadeau's leadership, the agency now has the statutory authority to hold the housing provider accountable for these emergency housing costs, where tenant displacement is due to their failure to properly maintain the building.¹¹ The OTA has closely consulted with the key agencies involved in the various stages of the process – the Office of Administrative Hearings, the Office of the Attorney General, and the Office of Tax and Revenue -- both individually and collectively, to develop the procedural guidelines and documents necessary to properly implement the program. Our goal has been to be as mindful as possible of any potential enforcement pitfalls, so that we can be as confident as possible that our use of the authority will withstand any legal challenge. We are now drafting relevant forms, notices, and templates for interagency review and comment, and we anticipate implementing the program before the end of the year, in time for the next OTR request for certifications of any outstanding agency liens.

¹¹ Law 21-211, the "Relocation Expenses Recoupment and Lien Authority Amendment Act of 2016."

Rent Control Housing Clearinghouse Database

The FY 2018 Budget Support Act¹² gave the agency a new statutory mandate -- to create a demonstration project to establish the initial framework for a user-friendly, internet-accessible, and searchable database for the submission, management, and review of all documents and relevant data housing providers are required to submit to the Rent Administrator under the District's rent control law. The OTA has developed a phased process to meet this requirement: assessment, design, vendor selection, development, and testing and modification.

Phases 1 and 2 have been substantially completed and we are currently in phase 3. The agency expects to submit a Request for Proposals to the Office of Contracting and Procurement within the upcoming weeks. Once a qualified vendor is selected, the OTA will collaborate with that vendor throughout the Development and Testing phases to complete the demonstration version of the database. The OTA is also hiring a technical expert to oversee the rest of the process and help us deliver the highest quality product possible. Finally, I note

¹² Law "Publicly Accessible Rent Control Housing Clearinghouse Emergency Amendment Act of 2017," Subtitle J of the FY 2018 Budget Support Act of 2017 (Law 22-33, effective December 13, 2017)

that we recently provided the Committee with our second quarterly report, as the mandate requires.

Conclusion

I wish to thank you, Chairperson Bonds and the Committee, as well as Mayor Bowser, for all the support you give to the OTA and the services we provide to the tenant community. This concludes my testimony and I am happy to answer any questions you and members of the Committee may have.